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IN THE COURT OF APPEALS OF INDIANA

TERRENCE G. SUTER,	)	
Appellant-Defendant,	)	
vs.	)	No. 84A05-0910-CR-565
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0804-FD-1201
Cause No. 84D03-0411-FB-3000

March 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Terrence G. Suter appeals the revocation of his probation. He presents the following restated issue for review: Did the trial court abuse its discretion when revoking Suter's probation and ordering him to serve four years of his previously suspended five years in the Department of Correction?

We affirm.

On November 5, 2004, the State charged Suter with class B felony possession of a firearm by a serious violent felon and class A misdemeanor domestic battery. On February 19, 2008, Suter pleaded guilty, pursuant to a plea agreement, to a reduced charge of class C felony unlawful possession of a firearm. In exchange, the State agreed to dismiss the domestic battery charge, as well as charges in two separate causes.[1] The same day as the plea, the trial court sentenced Suter as set forth in the plea agreement to seven years in prison, with five of those years suspended and two years of probation. This resulted in Suter being released to probation at the time of sentencing. As a condition of probation specifically set out in the plea agreement, Suter was required to "report immediately and submit himself to the inpatient treatment facility for Veterans in Danville, IL and comply with all recommendations of the treatment facility." *Appendix* at 130.

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[1] The charges in both causes related to crimes allegedly committed while Suter was released in the instant case awaiting trial. The first charged Suter with aggravated battery committed in May 2007. The second cause charged him with residential entry, domestic battery, possession of a switchblade, and public intoxication committed in January 2008. In addition to the charges that were dismissed pursuant to the instant plea agreement, in two other causes Suter was charged with and convicted of operating while intoxicated (February 2007) and public intoxication (April 2007).

Suter, a severe alcoholic, complied with the treatment program as directed.[2] Within a month and a half of being placed on probation, however, Suter committed the offense of operating a vehicle while intoxicated in Vigo County. Less than six months later, on September 28, 2008, he committed another such offense in Sullivan County. The State filed a notice of probation violation in October 2008, alleging the commission of these two additional offenses. Thereafter, on May 12, 2009, Suter was arrested at the Sullivan County Courthouse for public intoxication. An amended notice of probation violation was subsequently filed, adding this new offense.

On September 3, 2009, a probation revocation hearing was held in the instant case. At the hearing, Suter's probation officer acknowledged that Suter, a Vietnam veteran, suffers from post-traumatic stress disorder (PTSD) and related alcoholism. When asked whether Suter would be best served by further treatment instead of imprisonment, the probation officer testified: "I don't know about that; I mean, he did his counseling before and then he went and got rearrested several times." *Probation Hearing Transcript* at 12. In lieu of incarceration, Suter asked the trial court to impose in-home detention or some other program that would allow him to receive further treatment for his alcoholism, which is symptomatic of his PTSD. In revoking Suter's probation, the trial court rejected Suter's request for alternative placement and imposed four years in prison out of the previously suspended five years. Suter now appeals.

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[2] Specifically, Suter indicated at the hearing that he had completed a course of treatment "at the P.T.S.D. Unit at Danville, Illinois, the V.A. facility there." *Probation Hearing Transcript* at 17.

We observe that probation is a matter of grace left to trial court discretion, not a right to which a criminal defendant is entitled. *Prewitt v. State*, 878 N.E.2d 184 (Ind. 2007). "The trial court determines the conditions of probation and may revoke probation if the conditions are violated." *Id*. at 188. Further, Indiana Code Ann. § 35-38-2-3(g) (West, Westlaw through 2009 1st Special Sess.) provides that upon finding a violation of probation, a trial court may "[o]rder execution of all or part of the sentence that was suspended at the time of initial sentencing." The decision to revoke probation is within the sound discretion of the trial court, and the trial court's decision is reviewed on appeal only for abuse of that discretion. *Woods v. State*, 892 N.E.2d 637 (Ind. 2008).

In denying Suter's request for alternative placement and ordering execution of the bulk of the previously suspended sentence, the trial court explained as follows:

> Okay. Well, I mean, for the last five (5) years, there has not been three (3) months gone by when I haven't had to deal with Mr. Suter in some fashion…. *The Court's made numerous – has worked with defense counsel, made numerous arrangements to get him to the V.A. to try to get him the help that he believes he needs, and that the Court found that he needs, and unfortunately, he hasn't been able to take advantage of it.* And here we are now, he's been on probation for a year and a half, and he has three (3) D Felony arrests, one (1) conviction, one (1) is still pending, one (1) was dismissed pursuant to a plea agreement, and um, no disrespect to the service of Mr. Suter has done and that, but I, I disagree with the characterization that um, that he's only a danger to himself. I mean, he goes out there, based upon my experience, he gets out today, he's gonna be drinking within two (2) days, and we're gonna be back here and if he hits someone, kills them, … the public's gonna want to know why something wasn't done. I mean, I think that's a fair question to ask when someone's got three (3) D Felony D.W.I.s in … eighteen (18) months….

Probation Hearing Transcript at 28-29 (emphasis supplied).

Suter obtained the benefit of an extremely favorable plea agreement, pursuant to which the State agreed to reduce one count from a class B felony to a class C felony and agreed to dismiss six additional counts (including a B and a D felony) charged in three separate causes. As set forth above, the plea agreement provided that Suter would enter a specific treatment program as a condition of probation. Suter acknowledged at the probation hearing that he had completed the program. Despite receiving said treatment, Suter committed three separate alcohol-related offenses within fifteen months of being released to probation. Suter argues on appeal, as he did below, that he should be allowed to pursue additional treatment given his alcoholism/PTSD. His probation officer, however, expressed reservations about whether such additional counseling would be affective in curbing Suter's propensity to committed alcohol-related crimes.

Probation gives a defendant, such as Suter, an opportunity to show that he is able to rehabilitate himself and become a useful member of society without serving his time in prison, as well as gives the sentencing court an opportunity to observe the defendant's conduct during this period. *Hart v. State*, 889 N.E.2d 1266 (Ind. Ct. App. 2008). Suter was given such an opportunity here, as well as on several occasions in the past, and has wholly failed to rehabilitate himself and abstain from criminal behavior. On the record before us, we find no abuse of discretion in the trial court's decision to impose four years in prison instead of giving Suter yet another chance to seek treatment outside the confines of prison for his alcohol addiction.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.